

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 03-CI-1135
DIVISION II

COMMONWEALTH OF KENTUCKY
Ex rel. GREGORY D. STUMBO,
ATTORNEY GENERAL

PLAINTIFF

V.

FIRST INTERROGATORIES TO PLAINTIFF
FROM DEFENDANT,
WARRICK PHARMACEUTICALS CORPORATION

WARRICK PHARMACEUTICALS CORP., et al.

DEFENDANTS

*** **

Defendant Warrick Pharmaceuticals Corporation ("Warrick" or "Defendant") hereby requests, pursuant to Rule 33 of the Kentucky Rules of Civil Procedure, that Plaintiff Commonwealth of Kentucky ("Plaintiff") respond to the following interrogatories. Plaintiff is required to respond to these Interrogatories no later than September 15, 2004:

DEFINITIONS

1. Each of these definitions is incorporated into each of the interrogatories to which it pertains.
2. The term "document" is used in its broadest sense and means and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped or produced or reproduced by any other means. The term "document" means and includes, without limitation, all appraisals, records, personal notes, e-mails, cablegrams,

telexes, facsimiles, studies, calendars, day-timers, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries, records or recordings of telephone conversations, summaries or records of personal conversations of interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, statements, summaries, reports, journals, billing records, invoices, correspondence, letters, financial statements, balance sheets, accounting entries, tax returns, loan documents, and/or all written or recorded matter of any kind whatsoever. The term "document" also means and includes every other means by which information is recorded or transmitted including, without limitation, photographs, videotapes, tape recordings, microfilms, punchcards, computer programs, printouts, computer disks, diskettes or CD-ROMs, software, all recordings made through data processing or computer techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any nonidentical copies (e.g., those bearing notations or marks not found on the original document).

3. The term "person" refers to a natural person, a group of natural persons acting as individuals, a group of individuals acting in a collegial capacity (e.g., as a committee, board of directors, agency, etc.), a corporation, a partnership, a limited partnership, a limited liability partnership, a joint venture, a limited liability corporation, a government or governmental agency and/or any other incorporated or incorporated business, government or entity.

4. "Concern" and "Concerning" mean referring to, relating to, regarding, constituting, comprising, containing, setting forth, summarizing, reflecting, stating, describing, recording, noting, embodying, mentioning, studying, analyzing, evidencing, discussing or evaluating, directly or indirectly.

5. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by any means, including, but not limited to, letter, facsimile, e-mail, voicemail, memorandum, telephone and/or any other type of document.

6. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

7. When referring to documents, "to identify means to give to the extent known, the

- (a) type of document;
- (b) general subject matter;
- (c) date of the document; and
- (d) author(s); addressee(s), and recipient(s).

8. "Concerning" means referring to, describing, evidencing, or constituting.

9. When an interrogatory asks You to "state the basis" of or for a particular claim, assertion, allegation, or contention, please

- (a) identify each and every document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
- (b) identify each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
- (c) state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the interrogatory; and
- (d) state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the interrogatory.

10. "You," "your" or "the State" refer collectively to Plaintiff, Commonwealth of Kentucky, including but not limited to the Kentucky Cabinet for Health Services, the office of the Attorney General, the Office of the Inspector General, the Department for Medicaid Services, the Office of the Ombudsman, Drug Management Review Advisory Board, Drug Technical Advisory Committee, Pharmacy and Therapeutics Advisory Committee, the Kentucky Board of Pharmacy, Kentucky's elected or appointed officials, agents, employees, commissions, divisions, departments, agencies, instrumentalities, administrators and other persons or entities acting on its behalf.

11. "Kentucky Medicaid" shall refer to the Commonwealth of Kentucky's Medicaid program.

12. "Medicare" shall refer to the Federal Medicare program.

13. "Complaint" means the Amended Complaint filed in this action on or about October 15, 2003.

14. "Warrick" means Warrick Pharmaceuticals Corp. along with any predecessor or successor corporation, its directors, officers, employees, agents, representatives and/or other persons acting on its behalf, including attorneys.

15. "Schering" means Schering-Plough Corp. and Schering Corp., or any one of them, along with any predecessor or successor corporations, its directors, officers, employees, agents, representatives and/or other persons acting on its behalf, including attorneys.

16. "Manufacturer" means a company that manufactures pharmaceutical products, including, without limitation, Subject Drugs.

17. "Provider" means any entity or physician that provides health care to any Participant or Beneficiary.

18. "Subject Drugs" means the products listed in Exhibit 1 of the Amended Complaint and/or those drugs that are in any manner the subject of the allegations in the Complaint, whether or not manufactured by one of the Defendants.

19. "Publisher" or "Publishers" refers to any pharmaceutical price reporting/publishing service, including but not limited to, First Data Bank or Blue Book, Medical Economics Co., Inc. or Red Book, and Medispan.

20. "EAC" or "Estimated Acquisition Cost" shall have the meaning ascribed to that term pursuant to 42 C.F.R. § 447.301.

21. "AWP" means average wholesale price as reported by any "Publisher".

GENERAL INSTRUCTIONS

1. The responses, under oath, to each interrogatory shall include such information as is within Plaintiff's custody, possession, or control, or that of Plaintiff's attorneys, investigators, agents, employees, experts retained by Plaintiff or Plaintiff's attorneys, or other representatives.

2. Each interrogatory shall be answered separately.

3. To the extent that the answer to any interrogatory varies for any of the state agencies defined as Plaintiff, each agency should answer separately.

4. Unless otherwise specified, provide all of the requested information for the period of January 1, 1993 until the present. If it is necessary to refer to a prior time to fully answer an interrogatory, please do so.

5. If Plaintiff cannot answer an interrogatory after exercising due diligence to secure the information to do so: (a) answer to the extent possible; (b) state Plaintiff's inability to answer the remainder and the reason therefore; and (c) state whatever information or knowledge Plaintiff has concerning the unanswered portion.

6. If privilege or immunity is alleged as to information or documents required for responding to an interrogatory: (a) answer to the extent possible; (b) state the specific grounds for not answering in full; and (c) describe in detail the requested information or documents that are being withheld with

sufficient particularity to enable the claim of privilege or immunity to be adjudicated.

7. If Plaintiff claims that any specific interrogatory is objectionable, then: (a) identify the portion of such interrogatory claimed to be objectionable and state the nature and basis of the objection; (b) identify any information withheld pursuant to such objections with sufficient particularity and in sufficient detail to permit the court to determine whether information falls within the scope of such objections; and (c) answer any portion of such interrogatory that is not claimed to be objectionable.

8. In the event Plaintiff objects to any interrogatory set forth below on the basis of a contention that it is overbroad for any reason, please respond to that interrogatory as narrowed in such a way as to render it not overbroad in Plaintiff's opinion and state the extent to which Plaintiff has narrowed that interrogatory for purposes of Plaintiff's response.

9. Unless otherwise defined, all words and phrases used herein shall be accorded their ordinary meaning and shall be interpreted in their common, ordinary sense.

10. These interrogatories shall be deemed continuing and Plaintiff is required to supplement answers as required by the Kentucky Rules of Civil Procedure.

11. These interrogatories are submitted for the purpose of discovery

and are not to be taken as waiving any objections which may be made at trial to the introduction of evidence by any party on subjects covered by these interrogatories or as an admission of the relevance or materiality of any of the matters covered by these interrogatories at trial.

INTERROGATORIES

1. State the basis of your contention in paragraph 27 of the Amended Complaint that "Defendants had a Kentucky common law and Kentucky statutory duty to report pricing information which the Defendants knew fairly and reasonably reflected the prices in the marketplace," and specify all legal authorities on which you rely.

2. Identify all agencies, boards, organizations, consultants, accountants, task forces or any other entity that has reviewed or considered issues concerning Kentucky Medicaid's reimbursement of or expenditures for drugs or dispensing fees and identify the individual members of each.

3. Do You seek damages relating to the Kentucky Children's Health Insurance Program (KCHIP), the Kentucky Patient Access and Care Program (KenPAC), or the Passport Health Plan? If so, state the basis of Your claim(s).

4. Identify all persons with any responsibility for, involvement in, or influence on defining, calculating, or otherwise assessing Kentucky Medicaid's reimbursement for the Subject Drugs and for prescription drugs generally.

5. Identify all persons with knowledge about Kentucky Medicaid's

consideration of or decision to use AWP and/or to discount AWP in calculating reimbursement amounts for the Subject Drugs and for prescription drugs generally.

6. Identify any changes considered, proposed or adopted concerning Kentucky Medicaid's reimbursement for prescription drugs.

7. Identify all persons with knowledge of your decision to rely on, reliance on or use of drug pricing information published by any Publisher.

8. Identify each "medical care advisory committee" (42 C.F.R. §431.12(b)), including all members by title and/or subject of expertise.

9. Identify all persons who have testified in any judicial, legislative or administrative forum about Kentucky Medicaid's reimbursement of prescription drugs, costs or reimbursement rates for prescription drugs, or pharmacy dispensing fees, and identify the proceeding and date of testimony.

10. Do You contend that you understood AWP's reported by Publishers to reflect "the actual prices at which the Defendants and/or other sellers sold their drugs to Kentucky Medicaid providers" as set forth in paragraph 29 of the Complaint? If so, state the basis for Your contention.

11. Describe at least three specific instances in which Warrick "marketed the spread" to Kentucky Providers as alleged in paragraphs 31-36 of the Complaint. In describing each instance,

- (a) Identify the Warrick employee who marketed the spread;
- (b) Identify the Provider to whom the spread was marketed;
- (c) Identify the drug that was marketed; and
- (d) Identify the place and time of the alleged marketing.

12. Describe at least three specific instances in which Warrick "used free goods, educational grants and other incentives to induce providers to purchase their drugs, "as alleged in paragraph 34 of the Complaint. In describing each instance,

- (a) Identify the Warrick employee who engaged in such acts;
- (b) Identify the Provider to whom the alleged inducements were directed;
- (c) Identify the drug that was marketed;
- (d) Identify the "free goods, educational grants, [or] other incentive" that were offered; and
- (e) Identify the place and time of the alleged inducement.

13. Do you contend that "marketing the spread" and/or the use of free goods, educational grants or other incentives in the marketing of prescription drugs is illegal or otherwise impermissible? If so, state the basis for your contention and specify all legal authorities on which you rely.

14. Describe each instance in which Warrick "provided AWP and other pricing information directly to Kentucky Medicaid" as alleged in paragraph 24 of the Complaint.

15. Describe each instance in which you requested pricing information from Warrick or any other Manufacturer.

16. Identify, by year, the dollar amount paid for reimbursement by Kentucky Medicaid to physicians, pharmacies or other providers for each of the Subject Drugs. Please provide the yearly dollar amounts both as an aggregate figure and by Provider. Identify all documents relating to the information provided in response to this Interrogatory.

17. Identify, by year, the total number of units of each dosage form and strength and package size of each of the Subject Drugs for which reimbursement was paid by Kentucky Medicaid. Please provide the yearly total number of units of each dosage form and strength and package size requested both as an aggregate figure and by Provider. Identify all documents relating the information provided in response to this Interrogatory.

18. Identify, by quarter, the Medicaid utilization amounts submitted by Kentucky to CMS for each of the Subject Drugs. Identify all documents concerning the information provided in response to this Interrogatory.

19. Identify, by year, the amount paid by Medicare beneficiaries for each of the Subject Drugs. Please provide each of the yearly dollar amounts requested both as an aggregate figure and by beneficiary. Identify all documents concerning the information provided in response to this Interrogatory.

20. Identify the "spread," as that term is used in the Complaint, for each of the Subject Drugs, and identify all documents concerning the information provided in response to this Interrogatory.

21. Identify any person whom you or your attorneys expect to use as an expert witness in conjunction with this litigation and, as to each such person, state:

- (a) the subject on which the person is expected to provide expert testimony;
- (b) the substance of the facts and opinions as to which such person is expected to render an opinion;
- (c) the documents such person reviewed in connection with rendering his or her opinion;

- (d) a summary of the grounds for each such opinion;
- (e) each judicial or administrative proceeding in which each such person has testified or is currently expected to testify;
- (f) the person's educational, employment and professional background;
- (g) any publications and non-published reports or studies that such person has authored, co-authored or helped to write or research;
- (h) any other information that you may use to qualify such person as an expert or that bears on such person's expertise; and
- (i) whether such person has been previously retained by you, your attorneys or their law firms, including, but not limited to the circumstances of such employment.

Dated: May 25, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, to the following on this 25th day of May 2004:

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